

# Navy Victims' Legal Counsel Program

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RETALIATION  
Or  
It's Not Me, It's You



# Plan of Attack

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- Why we care
- What is Retaliation?
  - Legal cites
  - In a nutshell
- Tools/RUF for Addressing Retaliation
- Examples and Hypotheticals



# Why We Care

- Well, Congress...
- It's an issue:
  - USFFC SAPRO report: <http://www.hrw.org/node/134969>
  - Human Rights Watch report: [www.hrw.org/reports/2015/05/18/embattled](http://www.hrw.org/reports/2015/05/18/embattled)
- And because we, as VLCP, should and do:

“If you believe you are the subject of harassment, retaliation, or intimidation related to your report of sexual assault, I will discuss, advise, and assist you on avenues of complaint to redress that treatment.”



# Retaliation – Legally speaking

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- FY14 NDAA Sec. 1709, 1714, 1715, 1751
- FY15 NDAA Sec. 508
- SECNAVINST 5370.7D
- ALNAV 030/14
- UCMJ Art. 92



# Retaliation – In a nutshell

- Threatening/taking adverse personnel action or withholding/threatening to withhold favorable personnel action
- Ostracism
- Maltreatment
- BECAUSE MEMBER REPORTED A CRIMINAL OFFENSE



# Defining Personnel Action

- Any action that affects/has potential to affect member's current position or career.
- Examples
  - Promotion
  - Disciplinary/corrective actions
  - Transfer/reassignment
  - FITREP / Eval
  - Decision on pay, benefits, awards or training
  - Referral for mental health eval
  - Any significant change in duties/responsibilities inconsistent with member's grade



# SRUF for Retaliation

- Phonecall/email to cognizant XO/CO/non-ISIC SJA
- Contact with ISIC SJA
- Formal letter complaint to CO
- 1150/138/EO formal complaint
- NCIS
- IG
- Congressional Inquiry
  
- Possible Ace: CO Fitrep impact of retaliation allegation (FY15 NDAA Sec. 508)



# EXAMPLES

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- VLC Cases
  - Christmas party MPO
  - Mental Health Eval gone crazy
  - Rumors about result/reason of PCS





# Examples

- Client reports unrestricted crime and investigation commences. Ship pulls into foreign port in C7F AOR where liberty buddies are mandatory, and no one agrees to be her liberty buddy. Client is effectively restricted to the ship.
- Client is not scheduled to do FSA duty for another 6 months, and is re-assigned to FSA duty early.



# Examples

- Client reports crime and investigation ensues. Client begins to get unfriended on Facebook by several command personnel. What if instead of being unfriended, client was subject to harassing comments left on his wall?
- Client was 1 of 3 finalists for Sailor of the Year prior to incident. Post-report, one of the other competitors is selected.



# Keep in Mind

- 1<sup>st</sup> Amendment vs. SECNAVINST and NDAA's
- Burden of proof, if going to go from administrative to criminal
- Noise has value, and lawyers are scary



# Questions?

